

General Information Letter: Taxpayer must prove facts entitling him to the subtraction claimed on his return for active duty military pay.

November 30, 1999

Dear:

This is in response to your letter dated November 2, 1999 in which you request a Private Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

My clients recently received the enclosed notice (copy) which purportedly disallows the claimed subtraction from income that amount which represents the taxpayer's wages for services in the Illinois National Guard. I have included a copy of the appropriate statute which I believe is the basis for the claimed deduction. I believe you will agree with me that the claimed subtraction from AGI is appropriate. If so, please have the Department records adjusted accordingly.

Alternatively, if you are in disagreement, consider this letter notice of my clients' objections to your notice.

DISCUSSION

Section 35 ILCS 5/203(a)(2)(E) is indeed the correct reference for the claimed deduction. However, 5/203(a)(2)(E) states:

(E) Any amount included in such total in respect of any compensation (including but not limited to any compensation paid or accrued to a serviceman while a prisoner of war or missing in action) paid to a resident by reason of being on *active duty* in the Armed Forces of the United States and in respect of any compensation paid or accrued to a resident who as a governmental employee was a prisoner of war or missing in action, and in respect of any compensation paid to a resident in 1971 or thereafter for annual training performed pursuant to Sections 502 and 503, Title 32, United States Code as a member of the Illinois National Guard;
(emphasis added)

IT 99-0092-GIL
November 30, 1999
Page 2

Accordingly, the statute only authorizes a subtraction modification for residents on active duty. The problem your clients experienced, therefore, was a lack of supporting documentation for their deduction (i.e. proof that the \$8,127.00 was earned while on active-duty). If your clients provide proof that they qualify for the subtraction modification they will be granted the exemption.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles Matoesian
Associate Counsel
Income Tax